72 - 942

NO._____

IN THE

Supreme Court of the United States

October Term, 1972

ROBERT HAINSWORTH, *Appellant*

v.

BOB BULLOCK, SECRETARY OF STATE OF TEXAS, *Appellee*

On Appeal From The United States District Court For The Western District of Texas

JURISDICTIONAL STATEMENT

ROBERT W. HAINSWORTH
Counsel for Appellant
Alvin Building
3710 Holman Avenue
Houston, Texas 77004

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

INDEX

APPENDIX

CITATIONS

NO._____

IN THE

Supreme Court of the United States

October Term, 1972

ROBERT HAINSWORTH, *Appellant*

v.

BOB BULLOCK, SECRETARY OF STATE OF TEXAS, *Appellee*

On Appeal From The United States District Court For The Western District of Texas

JURISDICTIONAL STATEMENT

To The Honorable Supreme Court:

Appellant appeals from the Final Order of the United States District Court for the Western District of Texas, and submits this Jurisdictional Statement.

Reference To Opinions Below

It appears that the opinions of the Court below have not yet been officially reported.

Statement Of Grounds For Jurisdiction

This was a proceeding for injunctive relief, challenging the constitutionality of a State statute as being repugnant to Amendment XIV, Section 1, of the Constitution of the United States, in its requirements for an independent candidate to obtain ballot position and that the Court enjoin and restrain the enforcement of Art. 13.50 V.A. T.S., by the Secretary of State of Texas, as it pertains to a nonpartisan or independent candidate for a district office in a district composed of only part of one county, being required to have his application signed by 5 per cent of the entire vote cast for Governor in such district at the last preceding general election, but not to exceed five hundred in number.

This suit was brought under 28 U.S.C. 1343 (3).

The Memorandum Order and Judgment of the United States District Court was dated and entered on the 19th day of September, 1972. Time of entry not known. The Order Denying Motion For Rehearing was dated the 3rd day of October, 1972, and was entered on the 3rd day of October, 1972. The Notice of Appeal was filed on November 2, 1972, in the United States District Court for the Western District of Texas, Austin Division.

The statutory provisions believed to confer on the Court jurisdiction of the appeal is Title 28, U.S.C.A., Sections 1253, 2281, and 2101 (b).

Cases believed to sustain the jurisdiction are: *Idle-Wild Bon Voyage Liquor Corp. v. Epstein, et al,* 1962 370 U.S. 713, 82 S.Ct. 1294, 8 L.Ed.2d 734; *Stratton v. St. Louis Southern Ry. Co.,* 1930, 282 U.S. 10, 51 S.Ct. 8, 75 L.Ed. 135.

Text Of State Statute Set Out

Art. 13.50 Non-partisan and independent candidates

The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer, as herein provided, and delivered to him within thirty days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed five hundred.

No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election.

The application shall contain the following information with respect to each person signing it: his address and the number of his poll tax receipt or exemption certificate and the county of issuance; or if he is exempt from payment of a poll tax and not required to obtain an exemption certificate, the application shall so state.

Any person signing the application of an independent candidate may withdraw and annul his signature by delivering to the candidate and to an officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office. Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 227; as amended Acts 1963, 58th Leg., p. 1017, ch. 424, § 104.

Vol. 9, Vernon's Texas Civil Statutes, Pages 504, 505.

Question Presented By Appeal

Whether Art. 13.50, Texas Election Code, V.A.T.S. violates the Constitution of the United States, Section 1, Amendment XIV, in its provisions and requirements for an independent candidate to get name on general election ballot?

Statement Of The Case

Appellant, a native citizen of the United States and of the State of Texas, and a citizen of Harris County, Texas, sought to become an independent candidate for the office of State Representative, District 86, in the November general election. Appellant complied with all requirements of the Texas Election Code, V.A.T.S., to get his name on the ballot as an independent candidate for the office of State Representative, District 86, in the November 7, 1972 general election except that appellant did not have or obtain as required by State statute, signatures of qualified voters, totaling 5 per cent of the entire vote cast for Governors in such district at the last preceding general election, or five hundred signatures of qualified voters in such district.

Each signer of the application must be a registered voter and the number of his registration certificate must be shown on the application, and each signer of the application must subscribe to an oath before a Notary Public, which states in part that the signer has not participated in the general primary election or the runoff primary election during that year which has nominated at either such election a candidate for the office which I desire (the name of such independent candidate) to be a candidate.

That the appellant and any others seeking to become an independent candidate was not and are not allowed by the State of Texas to commence obtaining signatures to get name on ballot until after the runoff primary of the major parties, which was on June 3, 1972. Within 30 days after the runoff primary, the appellant and all others seeking to become an independent candidate must have obtained the necessary number of signatures to application, and turn in same in to the proper officer. While appellant did not obtain 500 signatures to his application or the required five per cent of the entire vote cast for Governor in the last preceding general election in the district, still the appellant did have over 300 signatures of qualified voters who had not voted in either the first primary or runoff primary election. On July 3, 1972, appellant requested the Secretary of State for additional time in which to obtain additional signatures to his application, but appellant was not granted an extension. Appellant left his application to get name on general election ballot with the office of the Secretary of State on July 3, 1972.

Reasons Why Questions Presented Is So Substantial

The State of Texas by V.A.T.S. Election Code, Art. 13.50, in establishing the requirements for a nonpartisan or independent candidate to get name on ballot, has denied and continues to deny to other citizens who seek to become a nonpartisan or independent candidate in a general election from a populous county like Harris County, the equal protection of the laws, and by such restrictive statutory requirements have been able in the past and are still able under the present statutory law to effectively prevent nonpartisan or independent candidates for the

State Legislature from getting such candidates name on the general election ballot. That the requirements of the Texas statute with respect to nonpartisan or independent candidates are so unduly restrictive and burdensome as to constitute infringements on the interests of individual voters in the total elective process, and the interests of the State of Texas are not sufficiently compelling to justify such infringements.

If the office sought is that of State Representative in a populous county like Harris County, which includes more than twenty State Representative Districts, with a State Representative district consisting of about 70,000 to 75,000 people; or if the office sought is that of United States Representative in a populous county like Harris, which includes 4 to 5 Congressional districts, with a Congressional district consisting of about 400,000 people or over, yet in both the State Representative district and in the Congressional district, the Texas statute requires that in order to get one's name on the ballot as a nonpartisan or independent candidate, the number of signatures necessary is the same, 5 per cent of the entire vote cast for Governor in such district at the last preceding general election, but such number of signatures need not exceed 500.

In the case of *Linda Jeness et al, v. Ben W. Fortson, Secretary of State of Georgia*, 403 U.S. 431, 29 L.Ed.2d 554, 91 S.Ct. 1970, it appears that a State meets all constitutional requirements with respect to statutes pertaining to independent candidates if the State statute allows:

1. A citizen desiring to become an independent candidate, to have name printed on ballot for the general elec-

tion if nominating petition is signed by at least 5 per cent of the number of registered voters at the last general election for the office in question;

2. The total time for circulating the petition is 180 days;

3. A voter may sign a petition even though he has signed others;

4. A person who has voted in a party primary election is fully eligible to sign a petition;

5. No signature on a nominating petition needs to be notarized;

6. The signer of a petition is not required to state that he intends to vote for that candidate at the election.

Too, it is respectfully submitted to the Court that this may be the first time that an appeal has been made to the Supreme Court of the United States, from a challenge made to the constitutionality of the Texas statute pertaining to nonpartisan or independent candidates getting name on the ballot for the State Legislature of Texas, for there is not known of any previous decisions of the Supreme Court of the United States pertaining to the constitutionality of V.A.T.S. Election Code, Art. 13.50, or any prior enacted similar Texas statute.

For the reasons stated above, and in order that fairer and better government for all in Texas may be strengthened and advanced, and in order that nonpartisan or independent candidates are provided an equal opportunity with the candidates of the major political parties in the State of Texas to make their appeal to the electorate and to have their political voices heard, it is respectfully sub-

mitted that the question presented is so substantial as to merit the consideration of the Court, and to require plenary consideration, with briefs on the merits and oral argument for resolution.

This appeal is not from a decree of a District Court granting or denying an interlocutory injunction.

Respectfully submitted,

Robert W. Hainsworth
Counsel for Appellant
Alvin Building
3710 Holman Avenue
Houston, Texas 77004

APPENDIX

UNITED STATES DISTRICT COURT
Western District of Texas—San Antonio Division

ROBERT W. HAINSWORTH

v.

BOB BULLOCK, Secretary of State

A-72-CA-111

MEMORANDUM ORDER AND JUDGMENT

Before THORNBERRY, Circuit Judge; SUTTLE, District Judge; and WOOD, District Judge.

PER CURIAM

Plaintiff is an independent candidate for the office of State Representative in District 86 of the State of Texas, who was denied a position on the general election ballot for failure to meet the requirements of the Texas Election Code, Tex. Rev. Civ. Stat. Ann. art. 13.50 (1967). Plaintiff challenges the Constitutionality of article 13.50 as violative of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and seeks to enjoin the Texas Secretary of State from enforcing the challenged enactment.

It is undisputed that plaintiff satisfies the necessary jurisdictional prerequisite pursuant to 28 U.S.C §2281 to require the convening of a three-judge court to determine the issues. This suit was filed too late to be consolidated with *Raza Unida Party, et al. v. Bob Bullock, et al.*,

No. SA-72-CA-158 (W.D. Tex., Sept. 15, 1972), decided by us today; nevertheless, this panel was designated to hear the case. For the same reasons stated by us in *Raza Unida Party, et al. v. Bob Bullock, et al., supra,* this Court finds that article 13.50 serves a compelling state interest and is not violative of Equal Protection as applied to this plaintiff.

Accordingly, all relief sought by plaintiff is denied and the defendant's Motion, treated as one for summary judgment, is granted, and IT IS SO ORDERED.

Entered this 19th day of September, 1972.

A true copy of the original, I certify.

HOMER THORNBERRY
Homer Thornberry, Circuit Judge

D. W. SUTTLE
D. W. Suttle, District Judge

JOHN H. WOOD, JR.
John H. Wood, Jr., District Judge

By: Linda Peterson,
Deputy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SA-72-CA-158

RAZA UNIDA PARTY, ET AL

v.

BOB BULLOCK, SECRETARY OF
STATE OF TEXAS

MO-72-CA-50

AMERICAN PARTY OF TEXAS, ET AL

v.

BOB BULLOCK

W-72-CA-37

LAURAL DUNN, ET AL

v.

BOB BULLOCK, ET AL

CA-72-H-990

TEXAS NEW PARTY AND SOCIALIST
WORKERS PARTY, ET AL

v.

PRESTON SMITH, GOVERNOR OF
TEXAS AND BOB BULLOCK

MEMORANDUM OPINION

Before THORNBERRY, Circuit Judge; SUTTLE, District Judge; and WOOD, District Judge

SUTTLE, District Judge

The various plaintiffs, comprised of minor political parties, their candidates for public office, qualified voters wishing to vote for candidates of these political parties, and individuals desiring to run for public office as independent candidates, bring class actions seeking to have this Court declare invalid certain provisions of the Texas Election Code, and related Texas election laws. They also seek to enjoin the Texas Secretary of State from enforcing the challenged enactments. The statutes involved are all statewide in their application, and their constitutionality is questioned on the basis that they violate the First and Fourteenth Amendments to the United States Constitution by infringing on the right of association, free speech, equal protection and due process.

* * *

III.

In order to have the names of its nominees printed on the general election ballot, a new or minority party must meet the following requirements of article 13.45(2):

* * *

4. The petition may not be circulated for signatures until after the date set for the holding of the major parties' primaries. Signatures must be certified to the Secretary of State's office.

* * *

This year minority parties had from May 6th until June 30th, or approximately 53 days, to gather signatures.

5. Each person who signs a petition must be administered an oath before a notary public at the time he signs.

Plaintiffs contend that these requirements, singly and in totality, impede the election process, the right of association guaranteed by the First Amendment, and are violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The State of Texas argues that it has a compelling interest in requiring some minimum amount of public support before placing a candidate's name on the ballot and in assuring that all candidates are in fact seeking elective office in good faith. The Court agrees that these are valid state objectives. A review of the decisions since *Williams v. Rhodes, supra,* leads this Court to conclude that the totality of the scheme required by article 13.45(2) is not constitutionally impermissible. The Supreme Court in *Jenness v. Fortson, supra,* balanced Georgia's "relatively high" 5% petition requirement against the absence of oppressive party organization requirements, voter cross-over prohibitions, or a restrictive petition circulating time period. Likewise, Texas' lenient 1% petition requirement must be balanced against its more burdensome party organization, circulation, and anti-raiding requirements.

* * *

Although any percentage requirement is necessarily going to be arbitrary, 1% is a fair minimum to serve the state's compelling interest in this regard.

The Court in *Jenness,* 403 U.S. at 441, pointed out that "a large reason" for the invalidation of the Ohio

election scheme in *Williams* was Ohio's requirement that small parties establish "elaborate statewide, county-by-county, organization paraphernalia." The Texas requirement of precinct, county, and state conventions is obviously more burdensome than the Georgia scheme upheld in *Jenness*, but is clearly more hospitable to new or small parties than was the "entangling web of election laws" invalidated in *Williams*. Following the *Jenness* command to look to the "totality" of a state's requirements, and balancing Texas' burdensome organization requirements against its lenient 1% petition requirement, we hold that the organization requirements are constitutionally permissible.

* * *

We agree with the State's contentions. The Courts recognize a state's compelling interest to preserve the integrity of its election process. Under the Texas scheme a voter may exercise the franchise by voting in the primaries or by attending a minority party convention. "He cannot have it both ways. Such a requirement seems not only fair but mandatory under the holding in *Baker v. Carr*, [369 U.S. 186 (1962)]." Several Courts have found that a state has an interest in preventing "raiding," whereby members of one party vote in the primary of another party for the sole purpose of bringing about the nomination of the weakest candidate. So long as these "anti-raiding" provisions are narrowly drawn, as is the challenged Texas provision, the right of disaffected voters to associate in a new political party is not unduly burdened.

* * *

There is apparently no workable alternative to the requirement that each person who signs a petition be ad-

ministered an oath if the state is to be able to enforce its criminal penalties against cross-over voting and apprize the voters of these possible penalties. Given the state's interest in insuring that different candidates for the same office are supported by different voters, we uphold the oath requirement for want of a feasible alternative.

* * *

Nor does the Court find a violation of Equal Protection. The states have broad discretion in formulating election policies. *Williams v. Rhodes*, 393 U.S. at 34. The Supreme Court in *Jenness v. Fortson*, 403 U.S. at 411 recognized that holding primary elections involved burdens equal to those encountered in circulating nominating petitions.

* * *

Although the State of Texas does not offer any reasons for though the State of Texas does not offer any reasons for the lack of a provision allowing voters to cast absentee ballots for minority party candidates and independents, "Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, and their statutory classifications will be set aside only if no grounds can be conceived to justify them."

* * *

VII.

Plaintiff Laural N. Dunn, independent candidate for the United States House of Representatives, represents

himself and several other independent candidates in their challenge of article 13.50 of the Texas Election Code, which sets out the requirements independent candidates must meet in order to get on the general election ballot. The other plaintiffs represented by Dunn are two independent candidates for the Texas House of Representatives, one independent candidate for the Texas Senate, and one independent candidate for county commissioner of McClennan County, Texas.

* * *

Nevertheless, we conclude for the same reasons stated in Part III of this opinion that the requirements of article 13.50 serve a compelling state interest and do not operate to suffocate the election process. Nor are they violative of Equal Protection. The totality of the scheme imposed upon independent candidates is even less burdensome than that required of political parties. For these reasons we hold article 13.50 constitutional and deny relief to plaintiffs.

* * *

UNITED STATES DISTRICT COURT
Western District of Texas—Austin Division

ROBERT W. HAINSWORTH

v.

BOB BULLOCK, Secretary of State

A-72-CA-111

ORDER DENYING MOTION FOR REHEARING

Before THORNBERRY, Circuit Judge; SUTTLE, District Judge; and WOOD, District Judge.

PER CURIAM

On this 3rd day of October, 1972, came before the Court in the above styled cause, plaintiff's Motion for Rehearing filed herein on September 29, 1972. The Court, having considered the Motion and the files and records of the case, finds and rules as follows:

1. A hearing was held before this three-judge panel on September 7, 1972, with plaintiff, appearing pro se, and counsel for the defendant present. By agreement of counsel on both sides in this case, the Court consented to hear oral arguments by counsel, along with the oral argument in the consolidated four cases heard as *Raza Unida Party, et al v. Bob Bullock, et al,* SA-72-CA-158 (W. D. Tex., Sept. 15, 1972) all such three-judge court cases being found by the Court as presenting in combination similar issues. Whereupon, oral arguments were presented by all counsel of record for each of the parties, and the Court took the consolidated cases and this case under advisement.

2. At the conclusion of the hearing in this case, plaintiff was directed to file a supporting brief, which was filed on September 11, 1972. Defendant respondent on September 14, 1972, by filing a Motion to Dismiss and Trial Brief. At that time defendant waived any notice of hearing required by 28 U.S.C. § 2284 (2), and relied upon the oral argument and authorities presented at the hearing on September 7, 1972. [See letter of September 13, 1972 from Sam L. Jones, Assistant Attorney General to Dan W. Benedict, Clerk, attached herein as Exhibit "A"].

3. Based upon the remarks of counsel presented at the hearing on September 7, 1972, briefs submitted by the parties and the files and records of the case, this Court determined that no further oral arguments or evidentiary hearing was needed to present the issues in this cause. For the reasons fully discussed in Part III and Part VII of our Opinion in *Raza Unida Party v. Bullock, supra,* and based upon the authorities cited therein, this Court found that Article 13.50 of the Texas Election Code served a compelling state interest and was not violative of Equal Protection as applied to plaintiff Robert W. Hainsworth. Memorandum Order and Judgment to this effect was entered on September 19, 1972.

4. This Court finding no basis to amend its Judgment of September 19, 1972, it is accordingly ORDERED that plaintiff's Motion for Rehearing is hereby, in all things, DENIED.

Entered this 3rd day of October, 1972.

HOMER THORNBERRY
Homer Thornberry, Circuit Judge

D. W. SUTTLE
D. W. Suttle, District Judge

JOHN H. WOOD, JR.
John H. Wood, Jr., District Judge

A true copy of the original, I certify.
DAN W. BENEDICT, Clerk

By: SHIRLEY JONES, Deputy.

UNITED STATES DISTRICT COURT
Western District of Texas—Austin Division

ROBERT HAINSWORTH, *Petitioner*

v.

BOB BULLOCK, SECRETARY OF STATE OF TEXAS, *Respondent*

A-72 CA 111

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Notice is hereby given that Robert Hainsworth, the petitioner above named, hereby appeals to the Supreme Court of the United States from the Final Order denying motion for rehearing entered in this action on October 3rd, 1972.

This appeal is taken pursuant to 28 U.S.C.A., Sections 1253, 2281, and 2101 (b).

2. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

a. Plaintiff's Petition for Preliminary Injunction.

b. Plaintiff's Application for Three-Judge Court.

c. Plaintiff's Motion to Convene Three Judge Court. (4 pages)

d. Transcript of oral argument in Case No. A 72 CA 111, heard on September 7, 1972.

e. Defendant's Motion to Dismiss.

f. Plaintiff's Motion in Reply to Notice of Motion of Defendant.

g. Memorandum Order and Judgment, dated 19th day of September, 1972.

h. Motion for Rehearing. (1 page)

i. Order Denying Motion for Rehearing.

j. Respondent's Opposition to Motion for Rehearing.

k. Plaintiff's Motion for Stay and Injunctive Relief.

l. Any other matters required by law to be included.

3. The following question is presented by this appeal: Whether Art. 13.50 of the Texas Election Code, V.A. T.S., violates the Constitution of the United States, Section 1, Amendment XIV, in its provisions and requirements for an independent candidate to get name on general election ballot?

Robert Hainsworth, Petitioner
ALVIN BUILDING
3710 Holman Avenue
Houston, Texas 77004

PROOF OF SERVICE

I, Robert W. Hainsworth, appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of November, 1972, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on the Respondent, as follows:

On the Honorable Bob Bullock, Secretary of State of Texas by mailing a copy in a duly addressed envelope, with air mail postage prepaid to the Honorable Crawford C. Martin, the Attorney General of the State of Texas, The Supreme Court Building, Austin, Texas 78711.

Robert W. Hainsworth
Attorney for Petitioner
ALVIN BUILDING
3710 Holman Avenue
Houston, Texas 77004

Notice of Appeal filed on November 2, 1972, in the United States District Court for the Western District of Texas, Austin Division.